



CALIFORNIA ASSOCIATION OF REALTORS®

Key Legislative Issues

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California Association of REALTORS®

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Budget Gap Tax Increases: Oppose

California is facing record budget deficits. Last year, the Senate considered on multiple occasions a proposal to impose a forced overwithholding on independent contractors as a means of closing the budget gap. The proposal was ultimately defeated. However the budget deficits that spawned the proposal continue to plague the state. C.A.R. is concerned that not only may the withholding issue be revisited, but that other tax changes harmful to real estate and the state could be considered as well.

FORCED OVERWITHHOLDING ON INDEPENDENT CONTRACTORS

This proposal would have required anyone receiving a 1099-MISC form to be subject to overwithholding. C.A.R. is OPPOSED to forced overwithholding because:

There is no evidence that independent contractors are failing to pay their income tax obligations. The proposed withholding requirement is merely intended to accelerate income tax payments so that the state has immediate use of those funds AND can make money from the "float" that's earned while the funds are in its possession.

It creates significant administrative burdens for individuals that are now required to file 1099-MISC reports with the FTB. Under the proposal these individuals would now need to also calculate the required withholding amount and remit that amount to the state.

There will be significant administrative costs to the Franchise Tax Board, having to make refunds to those independent contractors whose withholding amount remitted to the state exceeds their income tax obligation.

TAX ON SERVICES

Over the years several pieces of legislation have been proposed to impose a sales tax on special services that are currently exempt from taxation. While none of these proposals have been approved by the Legislature, C.A.R. remains concerned that the idea will be raised again in connection with closing the budget deficit and continues to oppose a sales tax on real estate commissions and real estate-related services. Such a tax is regressive (placing a disproportionate burden on lower-income households because generally all of their income is spent on goods or services), places small companies at a disadvantage (larger companies can employ people "in house" for many services, while small companies do not), and puts California businesses at a disadvantage (Californians can choose out-of-state service providers when available rather than those subject to the tax).

A tax on real estate related services will increase the cost of housing because all services involved in purchasing a home will be taxed (e.g., home inspection, structural pest control inspection, escrow services, etc.).

CHANGES TO THE MORTGAGE INTEREST DEDUCTION

Preserving the mortgage interest deduction is clearly one of C.A.R.'s major tax objectives. As state and federal budget deficits have grown, legislative interest has increased at both levels of government in scaling back the cost of the deduction.

Until 1986 there was no state or federal limit on the amount of mortgage interest one could deduct for principal or second homes. The 1986 federal tax reform act established the present cap on the mortgage interest deduction. Both state and federal law (the state conformed to the federal change in 1987) now limit the deduction to the interest paid on a maximum \$1 million of mortgage debt (first and second homes) plus \$100,000 in home equity debt.

Critics of the mortgage interest deduction have continuously argued that it provides a disproportionate tax subsidy to the affluent and diverts state and federal housing funds which would be more effectively spent on housing for the less fortunate. In addition, the Legislative Analyst's Office has regularly recommended elimination of the mortgage interest deduction contending that it "has a small impact on the rate of home ownership."

Advocates, like C.A.R., have responded that the deduction encourages homeownership. The U.S. has achieved one of the highest rates of home ownership in the world since the deduction came into common use. Homeownership promotes community stability and pride, employment, savings and long-term investment—values that have made the U.S. strong and prosperous.

C.A.R. respectfully requests that legislators OPPOSE any of these proposals.

Interim Hearing: Issues Related to Appraisals

This year C.A.R. sponsored two bills designed to improve the cost and quality of appraisals. Both faced overwhelming resistance in the Legislature and eventually stalled. In response to concerns raised by C.A.R., Assembly Member Mary Hayashi, Chair of the Assembly Business, Professions and Consumer Protection Committee, agreed to hold an oversight hearing on the subject of appraisals. That hearing will be scheduled for this fall.

ISSUE BACKGROUND

The Home Valuation Code of Conduct (HVCC) is the result of a settlement between the New York Attorney General and the GSEs (Government Sponsored Enterprises - Fannie and Freddie) that he had threatened with liability for allowing inadequately underwritten loans to be made and resold. The HVCC has no force of law and was not enacted by Congress, but because the GSEs are so dominant in the marketplace, their internal rule has effectively pre-empted practice across the country. A New York lawsuit has thus changed the way that California lenders (and the appraisers they hire) do business.

The stated purpose of the HVCC is to create a separation between a loan officer, loan originator (loan broker) or sales agent and the appraiser retained to value the property. This need for separation has fueled an explosive growth in Appraisal Management Companies (AMCs) which act as the intermediary that receives the assignment from the lender and then hires the appraiser to complete it. With limited exceptions, the HVCC calls for no contact between the lender or sales agent and the appraiser regarding the property being appraised. Compliance with the HVCC became mandatory June of 2009.

The REALTOR® Experience

A July 2009 survey by C.A.R. indicated that after the new rule took effect, REALTORS® have observed the following:

- Appraisals saw an increase cost by an average of \$75,
- The time to complete an appraisal nearly doubled,
- Use of out-of-area appraisers increased from 22 percent to 61 percent,
- Validation of sales price decreased from about 63 percent to 15 percent, and
- The overwhelming majority of REALTORS® thought the ability to share appropriate "comps" or correct errors had worsened.

SPECIFIC CONCERNS ABOUT APPRAISALS

AMCs aren't adequately regulated. It is presently unclear whether the Office of Real Estate Appraisers (OREA) has sufficient authority under existing law to provide the necessary oversight of AMCs that ensures the quality, timeliness and neutrality of appraisals conducted by AMCs. The legislature should pass legislation to clarify that OREA has this authority. Here's what the OREA should be able to correct through adequate oversight:

- **Appraisals, especially those conducted by out-of-area appraisers, often do not accurately reflect the true value of the property because the appraiser isn't familiar enough with the area.** Most AMCs are based out of state and their appraisers are either employed or retained by the AMCs. Many out-of-area appraisers aren't adequately familiar with the neighborhoods in which they are appraising. A significant number of them are being sent many miles to appraise a property and don't have a full understanding of the nuances of a particular neighborhood.
- **There is no easy way to correct inaccuracies in an appraisal.** Concerns have been raised by REALTORS® that, even if a correction is an obvious one, corrections to an appraisal are almost impossible to obtain. The OREA should be able to audit the timeliness and accuracy of the AMCs' work product.
- **Lenders owning Appraisal Management Companies create a conflict of interest.** If the AMC is owned by the lender, the issue becomes: Is the appraiser more likely to appraise to the underwriting standards of their employer rather than appraise the property based on what is reflected in the market? OREA should be sensitive to conflicts of interest in referrals of appraisers employed or retained by an AMC owned by a lender or title company
- **Appraisals aren't portable, even if they should be.** Right now lenders are requiring the preparation of another appraisal even if a recent appraisal has already been obtained and paid for by the buyer for another lender. Because lenders often own AMCs, they have a financial incentive to require this additional appraisal, which can cost the buyer hundreds of dollars and take too much time to obtain.

SB 1178 (Corbett) – Anti-Deficiency Protections – SPONSOR

C.A.R. is sponsoring SB 1178 (Corbett) to extend anti-deficiency protections to homeowners who have refinanced "purchase money" loans and are now facing foreclosure. Most homeowners don't know that when they refinanced they lost their legal protections and now may be personally liable for the difference between the value of the foreclosed property and the amount owed to the lender.

"When is enough, enough?" Banks want to be able to foreclose upon a family's home and then continue to hound them for additional payment. How much more money can today's families afford to pay when they've already lost their homes and most likely their jobs? Are they never to have the opportunity to begin again?

ISSUE BACKGROUND

California has protected borrowers from so-called "deficiency" liability on their home mortgages since the 1930s, but the evolution of mortgage finance requires that the statute be updated.

Current law says that if a homeowner defaults on a mortgage used to purchase his or her home, the homeowner's liability on the mortgage is limited to the property itself. The law has worked well since the 1930s to protect borrowers, ensure the quality of loan underwriting and allow borrowers who are brought down by financial crisis to get back on their feet.

Unfortunately, the 1930s law does not extend the protection for purchase money mortgages to loans that re-finance the original purchase debt – even if the re-finance was only to gain a lower interest rate. Recent years of low interest rates have induced tens of thousands of homeowners to refinance their mortgages, yet almost no one realized that by re-financing their mortgage to obtain a lower rate, they were forfeiting their protections. These borrowers became **personally liable** for the balance of the loan.

WHY C.A.R. IS SPONSORING SB 1178

SB 1178 is fair. Home buyers, and lenders, entered into the purchase with the idea that the mortgage would be non-recourse debt, and that the lender would look to the security itself (the house) to make good on the debt if the borrower cannot. It meets the legitimate expectation of the borrowers, who have no idea that they are losing this protection by a refinance. Homeowners don't know that their refinance exposed them to personal liability, on the note. It would be unfair to allow a lender, or someone that has purchased a note from a lender, to pursue the borrower beyond the value of the agreed upon security.

Lenders could pursue families to collect this "deficiency debt" years down the road. Under current law, lenders have up to ten years to collect on the additional debt after a judgment has been entered on the foreclosure. Years after a family has lost their home, they could find themselves in even more financial trouble. Lenders could sell these accounts to aggressive collection agencies or even bundle them into securities. The end result would be banks who didn't lend responsibly in the first place coming after families for even more money that they don't have.

SB 1178 does NOT apply to loans that are not refinancing purchase money mortgages, to "cash-out" refinances or HELOCs.

CURRENT STATUS

In the Assembly.

C.A.R. respectfully requests your "YES" vote on SB 1178.

AB 1919 (Davis) – Transfer Tax – OPPOSE

C.A.R. is OPPOSING AB 1919 (Davis) which will essentially create a \$10 transfer tax on the filing of grant deeds. C.A.R. historically opposes increased transfer taxes because they add to the cost of the transaction.

ISSUE BACKGROUND

Existing law allows a county board of supervisors to create a survey monument preservation fund which can be financed by the imposition of a fee of up to \$10 to be charged upon the recording of a grant deed. This fee cannot currently be charged on the filing of grant deeds conveying lots created by recorded tract maps. AB 1919 would delete that exemption allowing the \$10 "fee" to be charged upon the recording of any grant deed. C.A.R. opposes this "fee" because it is a disguised transfer tax. A "fee" must be related to the services for which the fee is assessed; namely, monument preservation. In this case, by removing the exemption, the fee will be imposed on ALL grant deed recordings and not just those where monument preservation is ongoing and necessary; therefore the "fee" is a tax.

WHY C.A.R. IS OPPOSING AB 1919

AB 1919 will further increase the costs of buying a home. There have been several measures in recent years that have increased the cost of recording documents involved in a home purchase. AB 1919 will further increase the cost of buying a home. Since virtually all grant deeds now deal with lots created by recorded tract maps, everyone recording a grant deed will have to pay this \$10 in addition to all the other recording fees they are currently required to pay.

This is a TRANSFER TAX – NOT A FEE! State law specifically limits the amount collected for a fee to the cost of the actual service, in this case the recording of grant deeds. By earmarking the funds collected through these "fees" for the preserving of monuments that don't actually set the boundaries for the specific lot being transferred, AB 1919 is allowing counties to impose a new tax on the transfer of ALL grant deed recordings.

AB 1919 is attempting to make an end-run around voters. State law requires that new local taxes must be approved by voters. The sponsors of AB 1919 are hoping to avoid this "hurdle."

CURRENT STATUS

In the Senate.

C.A.R. respectfully requests your "NO" vote on AB 1919.